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PUBLIC RIGHTS IN MUNICIPAL STREETS BARRED BY EQUITABLE ESTOPPEL.—Statutes of limitations, unless by express provision, do not operate against the state.¹ A technical argument advanced in support of this doctrine is that as the sovereign can do no wrong, so also the sovereign cannot be negligent.² It would seem, however, that the statute of limitations does not rest on any assumption of negligence in the owner of property, but rather on the policy in favor of securing repose of rights.³ A better reason, therefore, why the statute does not operate against the state, is that the protection of public rights rests largely in the people, who, on account of individually slight interests, often would raise no objection to the user of an adverse claimant.⁴ If it were not for this rule, public rights, on account of the inadequacy of protection, would be subject to continual diminution. The policy in favor of securing public rights from the operation of the statute is, therefore, greater than that in favor of securing repose.

When, however, the question is raised against a municipal corporation with regard to rights that it holds in trust for the public, such as the streets, it has been insisted that the great number of people within a narrow compass, continual use, and the existence of municipal authorities who are able to watch the public interests, are facts which will sufficiently guard the public, and the rule ought to be varied. There is obviously much force in the argument. The result is that there is a decided conflict of authority on the question.⁵ But even if the courts refuse to apply the statute against a city, yet when the facts are that an individual, acting in good faith, has encroached on a public street, and has without objection substantially changed his position by building or improving his property with reference to his supposed rights, it may be contended with much greater force that his rights should be protected. This may be done by raising an equitable estoppel against the city. Accordingly it has been so held in a line of cases where the private rights were found to be of "more persuasive force in the particular case than those of the public."⁶ This result was reached in a recent Illinois case. *Village of Winnetka v. Chicago, etc., Ry. Co.*, 68 N. E. Rep. 407. The doctrine of equitable estoppel is often used in adjusting private rights,⁷ and if the policy is strong enough, there would seem to be no objection to its application against the public.⁸

The rule represents a compromise between preferring individual rights against the public in no instance, and applying the statute of limitations against municipal corporations in all cases. As the whole subject of acquisition of rights as against the public is one that must depend on the balance of policies, the compromise is perhaps the safer rule. In view of its adoption in a considerable number of cases, it may be fairly considered to have become an important doctrine to be dealt with in the consideration of cases of this class.

¹ *Commonwealth v. Moorehead*, 118 Pa. St. 344.

² *Armstrong v. Morrill*, 14 Wall. (U. S.) 120.

³ See *Roberts v. Pillow*, 1 Hempst. (U. S. C. C.) 624, 642.

⁴ See *Wheeling v. Campbell*, 12 W. Va. 36.

⁵ *Dill. Mun. Cor.* 4 ed. § 674; *Cross v. Mayor of Morristown*, 18 N. J. Eq. 305; *Wheeling v. Campbell*, *supra*.

⁶ *Ibid.* § 675.

⁷ *Storrs v. Barker*, 6 Johns. Ch. (N. Y.) 166.

⁸ See 15 HARV. L. REV. 737.